

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

BRIJMATTIE KISSOON, as Administrator of the  
Estate of TRIBHOWANDEO GANGARAM, and  
BRIJMATTIE KISSOON, Individually,

Plaintiff,

-against-

DAIMLER TRUCKS NORTH AMERICA, LLC,  
NAVISTAR, INC., FREIGHTLINER  
CORPORATION, and THOMAS BUILT BUSES,  
INC.,

Defendants.

Civil Action No.

**ANSWER TO VERIFIED  
COMPLAINT, SEPARATE  
DEFENSES, ANSWER TO  
CROSS-CLAIMS, DEMAND FOR  
STATEMENT OF DAMAGES  
AND CERTIFICATION  
PURSUANT TO L. CIV. R. 1.6**

Defendants, Daimler Truck North America LLC (improperly pled as Daimler Trucks North America, LLC and Freightliner Corporation) ("DTNA"), and Thomas Built Buses, Inc. ("TBB") (collectively, "Defendants"), by way of Answer to the allegations set forth in plaintiffs' Verified Complaint, hereby says:

**AS AND FOR A FIRST CAUSE OF ACTION  
ON BEHALF OF TRIBHOWANDEO GANGARAM**

1. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 1 of the Verified Complaint.
2. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 2 of the Verified Complaint.
3. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 3 of the Verified Complaint.
4. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 4 of the Verified Complaint.

5. DTNA admits that it is a Delaware limited liability company, with a principal place of business in Portland, Oregon.

6. TBB admits that it is a North Carolina corporation, with a principal place of business in High Point, North Carolina.

7. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 7 of the Verified Complaint.

8. Defendants deny the allegations set forth in in Paragraph 8 of the Verified Complaint.

9. Defendants deny the allegations set forth in in Paragraph 9 of the Verified Complaint.

10. Defendants deny the allegations set forth in in Paragraph 10 of the Verified Complaint.

11. Defendants deny the allegations set forth in in Paragraph 11 of the Verified Complaint.

12. Defendants deny the allegations set forth in in Paragraph 12 of the Verified Complaint.

13. Defendants deny the allegations set forth in in Paragraph 13 of the Verified Complaint.

14. Defendants deny the allegations set forth in in Paragraph 14 of the Verified Complaint.

15. Defendants deny the allegations set forth in in Paragraph 15 of the Verified Complaint.

16. Defendants deny the allegations set forth in in Paragraph 16 of the Verified Complaint.

17. Defendants deny the allegations set forth in in Paragraph 17 of the Verified Complaint.

18. Defendants deny the allegations set forth in in Paragraph 18 of the Verified Complaint.

19. Defendants deny the allegations set forth in in Paragraph 19 of the Verified Complaint t.

20. Defendants deny the allegations set forth in in Paragraph 20 of the Verified Complaint.

21. Defendants deny the allegations set forth in in Paragraph 21 of the Verified Complaint.

22. Defendants deny the allegations set forth in in Paragraph 22 of the Verified Complaint.

23. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 23 of the Verified Complaint.

24. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 24 of the Verified Complaint.

25. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 25 of the Verified Complaint.

26. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 26 of the Verified Complaint.

27. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 27 of the Verified Complaint.

28. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 28 of the Verified Complaint.

29. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 29 of the Verified Complaint.

30. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 30 of the Verified Complaint.

31. Defendants deny the allegations set forth in in Paragraph 31 of the Verified Complaint.

32. Defendants deny the allegations set forth in in Paragraph 32 of the Verified Complaint.

33. Defendants deny the allegations set forth in in Paragraph 33 of the Verified Complaint.

34. Defendants deny the allegations set forth in in Paragraph 34 of the Verified Complaint.

35. Defendants deny the allegations set forth in in Paragraph 35 of the Verified Complaint.

36. Defendants deny the allegations set forth in in Paragraph 36 of the Verified Complaint.

37. Defendants deny the allegations set forth in in Paragraph 37 of the Verified Complaint.

38. Defendants deny the allegations set forth in in Paragraph 38 of the Verified Complaint.

39. Defendants deny the allegations set forth in in Paragraph 39 of the Verified Complaint.

40. Defendants deny the allegations set forth in in Paragraph 40 of the Verified Complaint.

41. Defendants deny the allegations set forth in in Paragraph 41 of the Verified Complaint.

42. Defendants deny the allegations set forth in in Paragraph 42 of the Verified Complaint.

43. Defendants deny the allegations set forth in in Paragraph 43 of the Verified Complaint.

44. Defendants deny the allegations set forth in in Paragraph 44 of the Verified Complaint.

45. Defendants deny the allegations set forth in in Paragraph 45 of the Verified Complaint.

46. Defendants deny the allegations set forth in in Paragraph 46 of the Verified Complaint.

47. Defendants deny the allegations set forth in in Paragraph 47 of the Verified Complaint.

48. Defendants deny the allegations set forth in in Paragraph 48 of the Verified Complaint.

49. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 49 of the Verified Complaint.

50. Defendants deny the allegations set forth in in Paragraph 50 of the Verified Complaint.

51. Defendants deny the allegations set forth in in Paragraph 51 of the Verified Complaint.

52. Defendants deny the allegations set forth in in Paragraph 52 of the Verified Complaint.

53. Defendants deny the allegations set forth in in Paragraph 53 of the Verified Complaint.

54. Defendants deny the allegations set forth in in Paragraph 54 of the Verified Complaint.

55. Defendants deny the allegations set forth in in Paragraph 55 of the Verified Complaint.

56. Defendants deny the allegations set forth in in Paragraph 56 of the Verified Complaint.

57. Defendants deny the allegations set forth in in Paragraph 57 of the Verified Complaint.

58. Defendants deny the allegations set forth in in Paragraph 58 of the Verified Complaint.

59. Defendants deny the allegations set forth in in Paragraph 59 of the Verified Complaint.

60. Defendants deny the allegations set forth in in Paragraph 60 of the Verified Complaint.

61. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 61 of the Verified Complaint.

62. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 62 of the Verified Complaint.

63. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 63 of the Verified Complaint.

64. Defendants deny the allegations set forth in in Paragraph 64 of the Verified Complaint.

65. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 65 of the Verified Complaint.

66. Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph 49 of the Verified Complaint.

67. Defendants deny the allegations set forth in in Paragraph 67 of the Verified Complaint.

68. Defendants deny the allegations set forth in in Paragraph 68 of the Verified Complaint.

69. Defendants deny the allegations set forth in in Paragraph 69 of the Verified Complaint.

70. Defendants deny the allegations set forth in in Paragraph 70 of the Verified Complaint.

71. Defendants deny the allegations set forth in in Paragraph 71 of the Verified Complaint.

72. Defendants deny the allegations set forth in in Paragraph 72 of the Verified Complaint.

73. Defendants deny the allegations set forth in in Paragraph 73 of the Verified Complaint.

74. Defendants deny the allegations set forth in in Paragraph 74 of the Verified Complaint.

75. Defendants deny the allegations set forth in in Paragraph 75 of the Verified Complaint.

76. Defendants deny the allegations set forth in in Paragraph 76 of the Verified Complaint.

77. Defendants deny the allegations set forth in in Paragraph 77 of the Verified Complaint.

78. Defendants deny the allegations set forth in in Paragraph 78 of the Verified Complaint.

79. Defendants deny the allegations set forth in in Paragraph 79 of the Verified Complaint.

80. Defendants deny the allegations set forth in in Paragraph 80 of the Verified Complaint.



**AS AND FOR A SECOND CAUSE OF ACTION**  
**ON BEHALF OF TRIBHOWANDEO GANGARAM**

81. Defendants repeat and reassert each and every answer to the allegations set forth in Paragraphs 1 to 80 of the Verified Complaint and make them a part hereof as if set forth at length.

82. Defendants deny the allegations set forth in in Paragraph 82 of the Verified Complaint.

83. Defendants deny the allegations set forth in in Paragraph 83 of the Verified Complaint.

84. Defendants deny the allegations set forth in in Paragraph 84 of the Verified Complaint.

85. Defendants deny the allegations set forth in in Paragraph 85 of the Verified Complaint.

86. Defendants deny the allegations set forth in in Paragraph 86 of the Verified Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**ON BEHALF OF TRIBHOWANDEO GANGARAM**

87. Defendants repeat and reassert each and every answer to the allegations set forth in Paragraphs 1 to 86 of the Verified Complaint and make them a part hereof as if set forth at length.

88. Defendants deny the allegations set forth in in Paragraph 88 of the Verified Complaint.

89. Defendants deny the allegations set forth in in Paragraph 89 of the Verified Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION  
ON BEHALF OF TRIBHOWANDEO GANGARAM**

90. Defendants repeat and reassert each and every answer to the allegations set forth in Paragraphs 1 to 89 of the Verified Complaint and make them a part hereof as if set forth at length.

91. Defendants deny the allegations set forth in in Paragraph 91 of the Verified Complaint.

92. Defendants deny the allegations set forth in in Paragraph 92 of the Verified Complaint.

**AS AND FOR A FIFTH CAUSE OF ACTION  
ON BEHALF OF TRIBHOWANDEO GANGARAM**

93. Defendants repeat and reassert each and every answer to the allegations set forth in Paragraphs 1 to 92 of the Verified Complaint and make them a part hereof as if set forth at length.

94. Defendants deny the allegations set forth in in Paragraph 94 of the Verified Complaint.

95. Defendants deny the allegations set forth in in Paragraph 95 of the Verified Complaint.

**AS AND FOR A SIXTH CAUSE OF ACTION  
ON BEHALF OF BRIJMATTIE KISSOON**

96. Defendants repeat and reassert each and every answer to the allegations set forth in Paragraphs 1 to 95 of the Verified Complaint and make them a part hereof as if set forth at length.

97. Defendants deny the allegations set forth in in Paragraph 97 of the Verified Complaint.

**SEPARATE DEFENSES**

**AS AND FOR A FIRST DEFENSE, THESE DEFENDANTS ALLEGE:**

The Verified Complaint fails to state a cause of action against Defendants.

**AS AND FOR A SECOND DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants demand that liability be apportioned.

**AS AND FOR A THIRD DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, the injuries sustained by plaintiffs were not the result of any culpable conduct of Defendants, but were solely the result of the culpable conduct of the plaintiffs.

**AS AND FOR A FOURTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Any past or future costs or expenses incurred or to be incurred by the plaintiffs for medical care, dental care, custodial care, property damage or rehabilitative services, loss of earnings or other economic loss has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in CPLR § 4545.

**AS AND FOR A FIFTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs may not recover all or part of the damages allegedly sustained by virtue of their failure to mitigate the damages allegedly sustained.

**AS AND FOR A SIXTH DEFENSE, THESE DEFENDANTS ALLEGE:**

If plaintiffs sustained damages as alleged in the Verified Complaint, other than by reason of their own culpable conduct, then such damages were caused in whole or in part by the culpable conduct of some third person or persons over whom Defendants neither had nor exercised control.

**AS AND FOR AN SEVENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

The negligence of those responsible for the accident or the occurrence alleged in the Verified Complaint constituted a separate, independent, superseding, intervening culpable act or acts which constitute the sole proximate cause of the accident or occurrence alleged.

**AS AND FOR AN EIGHTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs have failed to state facts sufficient to provide a legal or factual basis to award compensatory damages to plaintiffs under any of the causes of action alleged in the Verified Complaint on file herein.

**AS AND FOR A NINTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Other parties not named in the Verified Complaint herein who were neither the agents nor the employees of Defendants were responsible parties.

**AS AND FOR A TENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

The incidents and events described in the Verified Complaint were caused in whole or in part by other persons and/or entities.

**AS AND FOR AN ELEVENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Each and every cause of action in the Verified Complaint is barred by the statute of limitations.

**AS AND FOR A TWELVETH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs are estopped from recovery on the Verified Complaint on file herein by virtue of the conduct of plaintiffs.

**AS AND FOR A THIRTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs' Verified Complaint is barred, in whole or in part, because plaintiffs did not exercise ordinary care, caution or prudence to avoid the injuries alleged; and the resulting

damages, if any, sustained by plaintiffs were proximately caused and contributed to by the negligence or intentional conduct of plaintiffs.

**AS AND FOR A FOURTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs are barred from recovery on the Verified Complaint on the grounds that the acts of plaintiffs constitute a waiver of their right to recover damages.

**AS AND FOR A FIFTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Any alleged damages plaintiffs sustained by reason of the matters alleged in the Verified Complaint, to the extent not caused by the negligence, conduct, omission or fault of plaintiffs, their agents, attorneys, partners and/or employees, were proximately caused by the negligent conduct, omission or fault of persons or entities other than Defendants, for whose acts and/or omissions Defendants are not responsible. Should Defendants be found liable to plaintiffs for matters alleged in the Verified Complaint, Defendants are entitled to have a determination of their responsibility and fault, if any, compared with the responsibility and fault of all other persons and entities who proximately caused plaintiffs' alleged damages.

**AS AND FOR A SIXTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

The liability of Defendants is limited under the terms of Article 16 of the CPLR.

**AS AND FOR A SEVENTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants were not the legal or proximate cause of any damages, if any, allegedly suffered by plaintiffs.

**AS AND FOR AN EIGHTEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs are not entitled under contract or statute to recover attorneys' fees for the acts alleged in the Verified Complaint.

**AS AND FOR A NINETEENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs are not entitled to recovery for any alleged damages suffered by plaintiffs because plaintiffs assumed the risk in acting in the manner which purportedly caused the injury to plaintiffs.

**AS AND FOR A TWENTIETH DEFENSE, THESE DEFENDANTS ALLEGE:**

That all risks and dangers connected with this situation at the time and place mentioned in the Verified Complaint were open, obvious and apparent and were known to and assumed by plaintiffs.

**AS AND FOR A TWENTY-FIRST DEFENSE, THESE DEFENDANTS ALLEGE:**

That any sums or consideration paid or promised to plaintiff by any person(s) or entity(ies) claimed to be liable for the injuries or damages alleged in the Verified Complaint shall reduce any judgment rendered in favor of plaintiffs as against Defendants to the extent of the greater of either the sums or consideration paid or promised to plaintiff or the amount of the released tortfeasor's(s') equitable share(s) or the damages in accordance with General Obligation Law Section 15-108.

**AS AND FOR A TWENTY-SECOND DEFENSE, THESE DEFENDANTS ALLEGE:**

If Defendants are liable to plaintiff, which Defendants expressly deny, then Defendants are entitled to a set-off for all settlements/benefits received by plaintiffs.

**AS AND FOR A TWENTY-THIRD DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants were not negligent, careless and/or reckless, in the exercise of any obligation to plaintiffs, if any obligation existed.

**AS AND FOR A TWENTY-FOURTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants acted at all times relevant hereto with good faith.

**AS AND FOR A TWENTY-FIFTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants fully complied with their warranty obligations to plaintiffs.

**AS AND FOR A TWENTY-SIXTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs' claims are barred by the limitations of the applicable warranties.

**AS AND FOR A TWENTY-SEVENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs' rights against Defendants, if any, are limited to those set forth in the applicable warranties.

**AS AND FOR A TWENTY-EIGHTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, plaintiffs' claims are barred by the applicable provisions of the Uniform Commercial Code.

**AS AND FOR A TWENTY-NINTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants acted at all times relevant hereto in full compliance with the law.

**AS AND FOR A THIRTEITH DEFENSE, THESE DEFENDANTS ALLEGE:**

Plaintiffs' alleged injuries were the result of the misuse of the product in issue, including but not limited to a failure to follow warnings or instructions.

**AS AND FOR A THIRTY-FIRST DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, the product in issue was altered after it left the control of Defendants.

**AS AND FOR A THIRTY-SECOND DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, the product in issue was not set up or assembled properly after it left the control of Defendants.

**AS AND FOR A THIRTY-THIRD DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, the product in issue was not used for its intended or reasonably foreseeable purpose.

**AS AND FOR A THIRTY-FOURTH DEFENSE, THESE DEFENDANTS ALLEGE:**

The product in issue was in full compliance with industry standards and regulations.

**AS AND FOR A THIRTY-FIFTH DEFENSE, THESE DEFENDANTS ALLEGE:**

At the time of its manufacture, the product in issue was state of the art.

**AS AND FOR A THIRTY-SIXTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, plaintiffs failed to preserve the product in issue in its condition as existing at the time of the accident at issue.

**AS AND FOR A THIRTY-SEVENTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, plaintiffs lost or destroyed the product in issue.

**AS AND FOR A THIRTY-EIGHTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Upon information and belief, plaintiffs altered, modified, corrected, fixed, and/or repaired, or caused to be altered, modified, corrected, fixed, and/or repaired the product in issue subsequent to the accident at issue.

**AS AND FOR A THIRTY-NINTH DEFENSE, THESE DEFENDANTS ALLEGE:**

Defendants assert all other affirmative defenses to the allegations of the Verified Complaint on file herein which are available to it under the law and which may arise based upon facts not known or not now recognized as operative respective of the legal issues raised by the allegations of the Verified Complaint on file herein.



**WHEREFORE**, defendant, Daimler Truck North America LLC (improperly pled as Daimler Trucks North America, LLC and Freightliner, demand judgment dismissing the Verified Complaint herein together with interest, costs and disbursements as may be required by law.

**ANSWER TO ALL CROSS-CLAIMS**

Defendants hereby answers the cross-claims of the other defendant named in this action, however asserted or alleged, as follows:

All cross-claims against Defendants by any defendant in this action are denied.

**DEMAND FOR STATEMENT OF DAMAGES**

Pursuant to the automatic disclosure provisions of Fed. R. Civ. P. 26(a)(1)(A)(iii), demand is hereby made that plaintiff provide Defendants with a written statement setting forth a computation of each category of damages claimed in this action.

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 1.6**

I, Matthew W. Bauer, hereby certify pursuant to Local Civil Rule 1.6, that the above-captioned matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

DATE: Newark, New Jersey  
August 3, 2022

CONNELL FOLEY LLP

BY: 

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**Matthew W. Bauer**  
*Attorneys for Defendants,*  
*Daimler Truck North America LLC*  
*(improperly pled as Daimler Trucks North*  
*America, LLC and Freightliner*  
*Corporation), and Thomas Built Buses, Inc.*  
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